



BRIEF IN SUPPORT OF PETITION FOR CERTIORARI.

I.**The Opinions of the Court Below.**

The opinion of the court below is not yet officially reported.

A certified copy of the opinion of the court below on original hearing is found in the record herein (R. 51).

A certified copy of the opinion of the court below on rehearing is found in the record herein (R. 68).

II.**Jurisdiction.**

A statement of the grounds on which the jurisdiction of this Court is invoked is made in the foregoing application and for the sake of brevity will not be repeated here.

III.**Statement of the Case.**

The case is fully stated in the petition to which reference is respectfully made.

IV.**Specification of Errors.**

A specification of the errors is fully set forth in the petition to which reference is respectfully made.

V.**Argument.**

Bearing in mind that to this Court a summary of the facts will lay bare the legal arguments, we have endeavored to accomplish that end in the statement of the matter involved

in the first part of the foregoing petition for a writ of certiorari.

We earnestly submit that equal protection of the laws and due process of law contemplate not a mere mockery but an actual trial and decision of the issues which litigants are required to present to the courts for adjudication.

This Court has recognized the proposition that a right or immunity set up or claimed under the Constitution of the United States may be denied as well by evading a direct decision thereon as by positive action thereon (*Chapman v. Crane et al.*, and *Stryker v. Crane*, 123 U. S. 540, 31 L. Ed. 235, 8 Sup. Ct. Rep. 211), and it is easy to perceive that the highest State court in the State of Louisiana to which we could ordinarily take our case, could, as we claim it did in the present case, deny due process of law to a litigant and turn the trial of the case into a sham by evading the decision of the very question upon which the success or failure of plaintiffs' cause hinges.

In the present case, the record, including the opinion of the Supreme Court of Louisiana in the case of *Succession of Tyson et al.* (R. 98), shows that there are two classifications of heirs in Louisiana and that the rights and powers of each class are different until they are put upon the same level by a judgment of the court recognizing the irregular heir as such and putting him in possession of the irregular succession property.

It is petitioners' contention that this law was purposely made by the legislators and that it was intended that it should operate equally upon every person who fell within the respective classifications.

The opinion of the Supreme Court of Louisiana on rehearing in this case, reiterates the reasons given by that Court in *Tyson v. Spearman*, 190 La. 871, 183 So. 201, in that case, for overruling the plea of estoppel which the defendants in this case who were also defendants in that case,

had filed in that case that the plaintiffs in that case who are co-irregular heirs with those in the present case had signed nothing and done nothing upon which these same defendants relied and that therefore, the plaintiffs were not estopped and our contention in the present case is that the two minors, Rosie Lee Gipson and Gus Gipson, did nothing and signed nothing in the present case, and that their tutrix was wholly without authority in law to make any representations that would bind them, or to make application for the holding of a family meeting with reference to a sale and was wholly without authority to make the deed or to effect a partition of the property because of the fact that her minor wards were irregular heirs instead of legal heirs.

If this were not true and if it did not have a vital bearing upon this case, the laws which divide heirs into these two classifications and fix their rights and powers with reference to the property, would mean nothing when one of the irregular heirs was a minor.

Petitioners, therefore, submit that a writ of certiorari should be granted herein as prayed for.

Respectfully submitted,

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